

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-67420 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: Christ Warrent Schwenk

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1647

Christ Warrent Schwenk

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1

By order dated 20 July 1966, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an oiler on board the United States SS METAPAN under authority of the document above described, on or about 26 May 1966, Appellant wrongfully created a disturbance by yelling and addressing foul and abusive language to fellow crew member Alfred Mainieri while the ship was at Belize, British Honduras; on or about 27 May 1966, while the ship was at Puerto Barrios, Guatemala, Appellant wrongfully threatened Mainieri with grave bodily harm; and later on the same day, assaulted and battered Mainieri by grabbing and pushing him.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence entries in the ship's Official Logbook and the testimony of three witnesses, one of which was the alleged victim.

In defense, Appellant offered in evidence his own testimony and two letters of commendation.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 25, 26 and 27 May 1966, Appellant was serving as an oiler

on board the United States SS METAPAN and acting under authority of his document while the ship was on a foreign voyage.

On 26 May 1966, at about 0100 hours, while the ship was at Belize, British Honduras, Appellant entered a room he shared with Mainieri and created a disturbance by loud playing of the radio therein and subjecting Mainieri to loud verbal abuse. The disturbance was personally observed by two fellow crewmen, Cabrara and Jiminez.

On 27 May 1966, at about 0730 hours, while the ship was at Puerto Barrios, Guatemala, Appellant threatened to "punch the living hell" out of Mainieri. Later the same day at about 1500 hours, he entered the room he shared with Mainieri, slammed the door, and Mainieri, anticipating physical violence, got up from his bunk. Appellant then, while cursing Mainieri, laid hold of him by the arm and pushed him back on his bunk.

Appellant's prior record consists of a two month suspension plus probation in 1957 for creating a disturbance; a two month suspension plus probation in 1960 for use of foul and abusive language; a two month suspension plus probation in 1963 for threatening to do bodily harm to a fellow crew member; a three month suspension plus probation in 1963 for threatening to damage engine room machinery; and an eight month suspension in 1964 for threatening to do bodily harm with a knife to a fellow crew member, for possession of liquor, and for failure to perform assigned duties.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings of the Examiner are not supported by the evidence; that revocation of Appellant's documents will result in the loss of his livelihood and deprive him of certain union pension benefits; and that such action is unduly harsh and excessive. It appears that a dispute arose at some time in the past between Appellant and the union to which he belongs, and Appellant further contends that the testimony of witnesses Cabrara and Jiminez should be disregarded because it may be tainted as a result of their being officials of that union and having a possible desire to see Appellant lose his pension benefits.

APPEARANCE: Standard, Weisberg and Harolds of New York by Aaron J. Ballen, Esq.

#### OPINION

The Examiner declined to accept Appellant's version of the

incidents described above. This is reflected in the findings of fact made herein and, in my opinion, these findings are supported by substantial evidence. While Appellant may have had a dispute with the union and while Cabrara and Jiminez may be officials of the union, there is nothing of record indicating that these factors influenced their testimony in any respect. On the other hand, there are the entries in the ship's Official Logbook and the testimony of Mainieri, all of which support the version of the incidents as testified to by Cabrara and Jiminez.

There appearing no reasonable basis for rejecting the Examiner's choice as to the credibility of the witnesses, I must conclude, that the charge and specifications have been proved. Nevertheless, I am of the opinion that the disturbance created is not so significant as to warrant revocation. Admittedly, Appellant has a long record of abusive behavior. Yet, most of such behavior has taken the form of threats which were not carried out. While an assault and battery technically may have been committed upon Mainieri, no bodily harm resulted. A six month outright suspension should be sufficient to remind Appellant to curb his aggressive tendencies in the future. The Examiner's order will be modified accordingly.

#### ORDER

The order of the Examiner dated at New York, New York, on 20 July 1966, is modified to provide for a suspension of six months. As so modified, the order is AFFIRMED.

P. E. TRIMBLE  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 13th day of July 1967

INDEX

ASSAULT (including battery)

pushing

DISTURBANCE

creation of

WITNESSES

credibility of